

**COURT OF APPEALS
DECISION
DATED AND FILED**

January 7, 2014

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2013AP1061

Cir. Ct. No. 2011CV434

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

MICHAEL J. KOSS,

PLAINTIFF-RESPONDENT,

V.

DAVID C. FINKBINER,

DEFENDANT-APPELLANT,

FINKBINER, DUFFY & CLAPP, S.C.,

DEFENDANT.

APPEAL from a judgment of the circuit court for Marathon County:
MICHAEL MORAN, Judge. *Dismissed.*

Before Hoover, P.J., Mangerson and Stark, JJ.

¶1 PER CURIAM. David Finkbiner, pro se, appeals a money judgment in favor of Michael Koss. Finkbiner argues the trial court erroneously

granted partial summary judgment determining Koss signed a contract in his personal, rather than a corporate, capacity. We hold that Finkbiner may not maintain this appeal because he was not personally aggrieved by the summary judgment decision, and we therefore dismiss.

BACKGROUND

¶2 Koss and Finkbiner executed a contract, which was drafted by Finkbiner. Koss later sued, alleging he was entitled to the return of \$6,000 he paid. Koss named both Finkbiner and a corporation, Finkbiner, Duffy & Clapp, S.C., as defendants.

¶3 Finkbiner and Finkbiner, Duffy & Clapp, S.C. responded that Koss, individually, was not a party to the contract. They asserted Koss had instead signed the contract in a corporate capacity. The trial court entered partial summary judgment in Koss's favor, determining Koss signed the contract in his individual capacity.

¶4 In its written decision, the court explained Koss "commenced an action for recovery of a \$6,000 advance he paid for consulting services provided by David C. Finkbiner & Company, S.C. (DCF&C), a predecessor to the defendant Finkbiner Duffy & Clapp, S.C. (FDC)." The decision stated, "Based upon uncontroverted facts the court can grant partial summary judgment finding that the contract was between the corporate defendant and Koss personally so any amounts owed would be to Koss." Additionally, when resolving another issue, the decision stated, "The simple fact is that Koss did not contract with David Finkbiner personally, he contracted with David C. Finkbiner & Company, S.C." Finally, the decision states, "Based upon the uncontroverted facts, specifically the written contracts, the court is able to grant a partial summary judgment

determining that those documents as drafted and executed created only a contractual relationship between DCF&C/FDC and Koss personally.”

¶5 The case proceeded to trial, where it was determined Koss was entitled to repayment of a portion of the \$6,000 advance from FDC. Finkbiner now appeals.

DISCUSSION

¶6 Finkbiner appeals in his individual capacity, pro se; Finkbiner, Duffy & Clapp, S.C. is not a party on appeal. On June 10, 2013, we entered an order providing:

On May 3, 2013, David Finkbiner filed a notice of appeal indicating that “David C. Finkbiner & Company S.C. subsequently Finkbiner Duffy & Clapp S.C.” appeals The notice of appeal is signed by Finkbiner, a person who is not a licensed attorney, as president of the corporation. Although the notice of appeal states that only the corporation appeals, the appeal was docketed with David Finkbiner as an appellant. A corporation can appear only by an attorney. *See Jadair, Inc. v. United States Fire Ins. Co.*, 209 Wis. 2d 187, 202, 562 N.W.2d 401 (1997); *Jonas v. Northeastern Mut. Fire Ins. Co.*, 44 Wis. 2d 347, 353, 171 N.W.2d 185 (1969). A notice of appeal signed by a nonlawyer is “fundamentally defective, and the court of appeals is without jurisdiction.” *Jadair*, 209 Wis. 2d at 213. Therefore, it appears that the only pro se appellant properly before this court is Finkbiner individually. Therefore,

IT IS ORDERED that the caption is amended to reflect that the only appellant is David Finkbiner.

Following our order, Finkbiner filed four motions for reconsideration, which we denied.

¶7 Finkbiner’s brief fails to acknowledge, much less address, our determination that he is the only appellant. As set forth above, the trial court

expressly held in its partial summary judgment decision that Finkbiner was not a party to the contract interpreted in that decision. A person may not appeal a judgment unless he or she “is aggrieved by it.” *Ford Motor Credit Co. v. Mills*, 142 Wis. 2d 215, 217, 418 N.W.2d 14 (Ct. App. 1987). “A person is aggrieved if the judgment bears directly and injuriously upon his or her interests; the person must be adversely affected in some appreciable manner.” *Id.* Because the partial summary judgment decision established that Finkbiner was not personally obligated under the contract, he was not aggrieved by the decision. Finkbiner therefore cannot appeal any issues resolved by the partial summary judgment. Because he raises no other issues on appeal, and cannot represent the interests of a corporation, we must dismiss.¹

¶8 No WIS. STAT. RULE 809.25(1) (2011-12) costs allowed. Despite the jurisdictional issue being specifically addressed in multiple orders and motions for reconsideration, Koss failed to raise the issue in his brief.

By the Court.—Appeal dismissed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5. (2011-12)

¹ Whether an individual has standing to appeal presents an issue of law that we review independently. *Estate of Hegarty v. Beauchaine*, 2006 WI App 248, ¶24 n.11, 297 Wis. 2d 70, 727 N.W.2d 857.

